

United States Senate

WASHINGTON, DC 20510-2309

January 16, 2014

14-61

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 12th Street SW, Washington, DC 20554

Dear Chairman Wheeler,

The D.C. Circuit Court of Appeals' recent decision in *Verizon v. FCC* is a major setback for Minnesota's consumers and small businesses, and it threatens access to the Internet as we know it. I am writing to urge you to take any and all appropriate actions necessary to preserve net neutrality.

Generally speaking, net neutrality is the principle that the Internet belongs to the people, not to huge corporations. Today, the Internet is an open marketplace where everyone can participate on equal footing – and that's the way it should be. The website for a small business in Willmar loads as quickly as the website for Wal-Mart's stores. Minnesota Vikings fans can read about their team on the sports website of their choice, whether that's ESPN or a blog written by a fan club in Duluth. An email from a constituent in Edina gets to me just as quickly as an email from my bank.

The Internet was developed at taxpayers' expense to benefit the public interest. It belongs to all of us. And net neutrality keeps it that way. Big corporations – like Verizon, Time Warner, and Comcast – control the broadband networks that feed the Internet into homes and offices across the country. The FCC's net neutrality rules say that these corporations cannot “unreasonably discriminate in transmitting lawful network traffic over a consumer's broadband Internet access service” and that broadband providers cannot “block lawful content, applications, services, or non-harmful devices.” In other words, the big corporations are prohibited from picking and choosing which lawful content will reach consumers and from charging content providers more to put them in a “fast lane.”

The *Verizon* decision does away with those rules. The potential consequences are disastrous. Now, there is no law to stop Wal-Mart from paying Comcast for preferential treatment so that its website loads more quickly and with better quality than the website of the small business in Wilmar. There is no law to stop Time Warner from blocking all movie websites except HBO and all news websites except CNN – both of which Time Warner owns. Simply put, the Internet – once an open platform for innovation, entrepreneurship, and free speech – could become a closed forum, accessible only to the highest bidders.

The FCC must act quickly to preserve net neutrality in response to the *Verizon* decision. Fortunately, the court clearly stated that the Telecommunications Act of 1996 empowers the FCC to promulgate rules governing broadband providers' treatment of Internet traffic. This

means that the FCC already has the legal authority it needs to require net neutrality. The FCC must exercise that authority to implement new rules that will preserve access to the Internet.

I look forward to working with you on this very important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Al Franken", with a long horizontal flourish extending to the right.

Al Franken
United States Senator



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 18, 2014

The Honorable Al Franken
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Franken:

Thank you for your letters expressing concern about the effect of the recent D.C. Circuit Court of Appeals decision in *Verizon v. FCC*. I share your view that the Internet must remain an open platform for innovation, entrepreneurship, and free speech.

In its opinion, the D.C. Circuit ruled that the Commission has the legal authority to issue enforceable rules of the road to preserve Internet freedom and openness, and it invited the Commission to act to preserve a free and open Internet. I intend to accept that invitation by proposing rules that will meet the court's test for preventing improper blocking of and discrimination among Internet traffic, ensuring genuine transparency in how Internet service providers manage traffic, and enhancing competition.

We are taking several actions toward that end. First, we have established a new docket – "Protecting and Promoting the Open Internet" (GN Docket No. 14-28) – that solicits public comment on issues raised in the court's opinion. I am enclosing a copy of the Public Notice establishing the new docket for your information.

Additionally, I will recommend to my fellow Commissioners that the FCC seek comment through a formal rulemaking on the specific rules for preserving and protecting the open Internet. First, we need to enforce and enhance the transparency rule that the court affirmed. The transparency rules require that network operators disclose how they manage Internet traffic, which gives edge providers the technical information they need to create and maintain their products and services.

Second, we need to fulfill the "no blocking" goal. Consistent with the court opinion, we will carefully consider how we can ensure that edge providers are not unfairly blocked, explicitly or implicitly, from reaching consumers, and that consumers can continue to access any lawful content and services they choose. Third, we need to fulfill the goals of the nondiscrimination rule by considering how Section 706 might be used to protect and promote an open Internet consistent with the D.C. Circuit's opinion and its earlier affirmance of the Commission's *Data Roaming Order*.

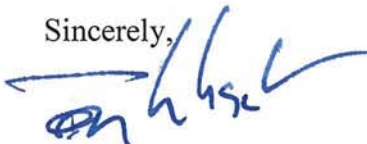
I also intend to keep on the table the Commission's option of addressing these issues under Title II of the Communications Act. As the court noted, as long as Title II – with the ability to reclassify Internet access service as a telecommunications service – remains a part of the Communications Act, the Commission has the ability to utilize it if warranted. In light of the D.C. Circuit's finding that the Commission has authority to issue new rules under Section 706 and the ongoing availability of Title II, the Commission will not seek judicial review of the *Verizon* decision.

I am pleased that major Internet service providers have indicated that they will continue to honor the safeguards articulated in the *Open Internet Order*, and that Verizon does not intend to appeal the D.C. Circuit's decision. Abiding by these safeguards is the right and responsible thing to do, and will continue to provide protection for the open Internet until new rules are put in place.

I also want to look for opportunities to enhance Internet access competition. As I have stated, one obvious candidate for close examination (which was raised in Judge Silberman's separate opinion in the *Verizon* case) is legal restrictions on the ability of cities and towns to offer broadband services to consumers in their communities.

Preserving the Internet as an open platform for innovation and expression while providing certainty and predictability in the marketplace is an important FCC responsibility. I appreciate your recognition of this fact and your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized flourish extending to the right.

Tom Wheeler

Enclosure